UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: CYRUS II, LP BAHAR DEVELOPMENT, INC. MONDONA RAFIZADEH, et al., Debtors	§ § § § § §	CASE NO. 05-39857-H1-7 (Jointly Administered) Chapter 7
RODNEY D. TOW, AS THE CHAPTER 7 TRUSTEE FOR CYRUS II, L.P., et al. Plaintiffs VS. SCHUMANN RAFIZADEH, et al. Defendants	§ § § § § § § § § § §	ADVERSARY PROCEEDING NO. 07-03301

AMENDED MOTION OF ONE WORLD FUTURE PTY, LTD. TO DISMISS FOR LACK OF *IN PERSONAM* JURISDICTION

Defendant, ONE WORLD FUTURE PTY, LTD. (hereinafter "One World"), hereby moves the Court pursuant to Rule 12(b)(2), Fed. R. Civ. P., to dismiss the claims asserted against it because the Court lacks *in personam* jurisdiction over this Australian entity. One World submits the following argument and authorities for the Court's consideration.

I. OVERVIEW AND SUMMARY OF ARGUMENT

To determine whether this court may exercise jurisdiction over a foreign corporation consistent with due process, only the contacts of that defendant with the United States may be examined. Plaintiffs' serial Complaints in this adversary proceeding literally allege *no* contacts by

One World, admittedly an Australian entity, with Texas or any other State. Plaintiffs' efforts to predicate jurisdiction upon imputed contacts arising from their theories of conspiracy, single business enterprise and alter ego must fail for three reasons: first, the due process clause, as interpreted in Texas, does not allow contacts to be imputed to a foreign defendant through alleged participation in a conspiracy; second, the due process clause, as interpreted in Texas, does not allow contacts to be imputed through alleged membership in a single business enterprise, regardless of whether such a theory of liability is regarded as stating a valid claim; and third, where the Complaints do not allege any stock ownership by the Rafizadehs, directly or indirectly, in One World, and there is no evidence that the Rafizadehs exercise the level of control over the day to day operations of One World that is required under Texas law, no jurisdictional contacts may be imputed on an alter ego theory.

Where there are neither constitutionally sufficient contacts by One World with the State of Texas or any other state, and the assertion of jurisdiction over this Australian entity would offend traditional notions of fair play and substantial justice in the unusual circumstances of this adversary proceeding, the claims against One World must be dismissed.

II. JURISDICTIONAL ALLEGATIONS AND PROCEDURE

A. Procedure and Presumptions on Motion to Dismiss

Federal Bankruptcy Rule 7004(f) defines personal jurisdiction over defendants in an adversary proceeding pending before a bankruptcy court. *In re IFS Financial Corp*., 2007 WL 2692237, *2 (Bkrtcy S.D. Tex. 2007)(Isgur, J.). That Rule authorizes personal jurisdiction to the extent allowed by the Fifth Amendment Due Process Clause. *Id.* Under the Texas long arm statute, Tex. Civ. Prac. & Rem. Code §17.042 (2007), a court has personal jurisdiction over a foreign defendant to the fullest extent allowed by the Federal Constitution. *Alpine View Co., Ltd. v. Atlas Copco AB*, 205 F.3d 208, 214 (5th Cir. 2000). Thus, the court's usual two-step analysis reduces to one step, and the court must determine whether exercising jurisdiction over One World is consistent with the due process clause. *Id.* (citations omitted). As this court has observed, "the 'minimum contacts' analysis used in diversity cases is applied to a foreign defendant in bankruptcy court adversary proceedings based on federal law, with one exception. Instead of looking only at a defendant's contacts within the forum state, courts aggregate the defendant's contacts within the entire United States." *IFS Financial*, 2007 WL 2692237 at *3.[1]

When a non-resident defendant moves the court to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of establishing the court's *in personam* jurisdiction over the non-resident. *Allred v. Moore & Peterson*, 117 F.3d 278, 281 (5th Cir. 1997). When faced with a motion to dismiss for lack of personal jurisdiction filed pursuant to Rule 12(b)(2), a plaintiff "must do more than merely allege that jurisdiction exists. It must carry its burden by establishing facts to show that jurisdiction has been properly invoked." *Kern v. Jeppesen Sanderson, Inc.*, 867 F. Supp. 525, 533 (S.D. Tex. 1994) (Black, C.J.). The party seeking to assert jurisdiction must present sufficient facts to make out a prima facie case supporting jurisdiction. *Alpine View,* 205 F.3d at 215. The court accepts as true that party's uncontroverted allegations, and resolves in its favor all conflicts between the facts contained in the parties' affidavits and other documents. *Id.* (citations omitted). The court, however, is not required "to credit conclusory allegations, even if uncontroverted". *Panda Brandywine Corp. v. Potomac Electric Power Co.*, 253 F. 3d 865, 869 (5th Cir. 2001). The court will not accept legally conclusory assertions or draw "argumentative inferences". *In re: Terrorist Attacks on September 11, 2001*, 349 Supp. 2d 765, 804 (S.D. N.Y. 2005), *quoted in Kennard v. Indianapolis Life Ins. Co.*, 2006 WL 343 8653,*4 (N.D.Tex. 2006). Absent allegations of any specific, purposeful act through which the defendant can be said to have sought the benefits of Texas law by "availing itself of the jurisdiction", evidence that a defendant is a non-resident is sufficient to meet its burden. *Olympia Capital Associates, LP v. Jackson*, 247 S.W. 3d 399, 407 (Tex. App. - Dallas 2008, no pet.)

---

[1]One World's original Motion to Dismiss for Lack of In Personam Jurisdiction (Docket no. 698) addressed only contacts with the State of Texas, rather than national contacts, under the Texas long-arm statute. That analytical error has been corrected in this Amended Motion. As jurisdiction under that statute is coextensive with the full reach of the Federal due process clauses, however, and plaintiffs' serial Complaints do not allege any contacts by One World either with Texas or any other State, the substantive analysis remains the same.

B. Plaintiffs' Jurisdictional Allegations

One World was first named as a party to this adversary proceeding by the "Supplemental Complaint" filed on October 29, 2007 (Docket No. 290). That Supplemental Complaint accurately describes One World as an Australian proprietary limited company maintaining its registered office and principal place of business in Australia (¶ 370). The Supplemental Complaint further accurately identifies the sole shareholder, director and corporate secretary of One World as Hamid Vaezi, a citizen of the Commonwealth of Australia (¶ 475). Neither the Supplemental Complaint nor the Second Supplemental Complaint, filed March 27, 2008, includes any direct allegation of One World's susceptibility to jurisdiction consistent with the Due Process clauses of the Constitution. There is no allegation in any of plaintiffs' complaints that One World has conducted business in any state of the United States, whether by committing a tort in Texas, in any other State, or otherwise, or, indeed, any other specific allegation of conduct by One World in the United States upon which jurisdiction is sought to be predicated.

There are, instead, only vague and general allegations of membership by One World in the so-called "Rafizadeh entities" alleged to comprise the "Rafizadeh single business enterprise" (See Original Complaint, Paragraph 165, and Supplemental Complaint, Paragraph 517, reciting that One World is "added as Defendant[ ] to [the] Single Business Enterprise Cause of Action.") The Supplemental Complaint further purports to include One World in Count 8, Civil Conspiracy (See Supplemental Complaint, Paragraphs 512-515) and to Count 14, Alter Ego (Supplemental Complaint, Paragraphs 518-519). Significantly, neither the Original Complaint, nor the First or Second Supplemental Complaints, even attempt to allege any activities, conduct, or contact by One World in or with the State of Texas or otherwise in the United States.

C. Denials of Jurisdictional Allegations

With regard to plaintiffs' allegations in Count 8, Civil Conspiracy, One World denies the allegations of Paragraphs 514 and 515 of the Supplemental Complaint.[2] With regard to the allegations of Count 13, Single Business Enterprise, One World specifically denies the allegations of Paragraphs 331-333, and 335 of the Supplemental Complaint, insofar as those allegations apply to the actions, activities, and conduct of One World.[3] With regard to the allegations of Count 14,

---

[2]It is probably unnecessary even for One World so to deny these allegations in the context of this Motion to Dismiss, for as developed in Section III.B.1. below, the Texas Supreme Court has explicitly rejected an alleged participation in a civil conspiracy as a basis for the exercise of *in personam* jurisdiction.

[3]Because the Court has dismissed the Louisiana single business enterprise claims arising under Count 13, One World has denied only those allegations purportedly made under Texas Law. That denial, too, is probably unnecessary in the context of this Motion to Dismiss, for as is developed in Section III.B.2. below, Texas courts have specifically rejected a Defendant's participation as part of a "Single Business Enterprise" as a valid basis upon which *in personam* jurisdiction may be predicated.

Alter Ego, One World specifically denies the allegations of Paragraphs 337-39 of the Supplemental Complaint, insofar as those allegations apply to the actions, activities, and conduct of One World.[4]

In the Original Complaint, plaintiffs alleged in considerable detail in Paragraphs 165-294 the precise means and manner by which the Defendants URF, the so-called "Leech Entities", the so-called "Alphabet Soup Entities", and BDI, Cyrus II, AMI, and SFE were said to be Rafizadehs' alter egos and part of the "Rafizadeh single business enterprise" (adding, for good measure, that Schumann and Mondona Rafizadeh are each a "central part" of that enterprise). There are no comparable allegations in either the Supplemental Complaint or the Second Supplemental Complaint, describing how One World is alleged to be a constituent participant in the single business enterprise or to be the alter ego of one or both of the Rafizadehs (or their companies).

On their face, therefore, despite the inclusion of more than 650 paragraphs of allegations, the plaintiffs' Original, Supplemental, and Second Supplemental Complaints fail to state a factually sufficient basis for the assertion of *in personam* jurisdiction over One World. The best plaintiffs could do is allege, in Paragraph 639 of the Second Supplemental Complaint, that One World and the as-yet unserved Australian entity Flash Voss Pty "appear to be nothing more than conduits, instrumentalities or tools created or controlled and directed by Schumann Rafizadeh, similar to SFE, Universal Sourcing, and Wellspring Sourcing, which Mr. Rafizadeh has used in collaboration with the other Defendants to launder Rafizadeh assets and return ultimate control of these assets to himself." The court may not, however, credit these conclusory and argumentative assertions in ruling on this Motion to Dismiss.[5]

---

[4]While alter ego has been recognized in Texas as providing a limited basis upon which *in personam* jurisdiction may be predicated as is developed in Section III.B.3. below, the jurisdictional touchstone remains not the activities and conduct of the Rafizadehs, but rather, the specific activities and conduct of One World as directed to the forum state which determines whether jurisdiction may be asserted consisted with due process.

In the final analysis, all that plaintiffs have alleged in regard to One World is that this Australian entity has received transfers of funds, in Australia, from a Nevada corporation with its principal place of business in the People's Republic of China, ostensibly at the tail end of the grand conspiracy by the Rafizadehs to evade the obligations arising from the Louisiana judgment. There is literally no allegation in any of the complaints, however, identifying any actions, conduct, or activities of One World *directed toward or occurring in the State of Texas or anywhere else in the United States*. The absence of any such allegations is perhaps unsurprising, considering that, by plaintiffs' own admission, One World is an Australian entity that has been in existence for only a short period of time, which conducted no business whatsoever in the United States of America, much less the State of Texas. Plaintiffs' failure to identify any contact between One World and the United States deprives this court of personal jurisdiction over that defendant, as developed in the next section of this Motion.

III. THE COURT LACKS *IN PERSONAM* JURISDICTION OVER ONE WORLD

A. The Applicable Constitutional Standards for Assertion of Jurisdiction

A court may properly assert personal jurisdiction over a non-resident, consistent with the due process safeguards of the United States Constitution, when the defendant's minimum contacts with the forum are purposeful.[6] *Capital Finance & Commerce AG v. Sinopec Overseas Oil & Gas Ltd.*, ___ S.W. 3d ___, 2008 WL 2186391, *5 (Tex. App.-Houston [1st Dist.] 2008, no pet.) An act or acts "by which the *defendant purposefully avails* itself of the privilege of conducting activities" in the forum state and "thus invok[es] the benefits and protection" of its laws, constitutes sufficient contact with the forum to confer personal jurisdiction. *Michiana Easy Livin' Country, Inc. v. Holten*, 168 S.W. 3d 777, 784 (Tex. 2005) (emphasis in original). The requirement of "purposeful availment" is the "touchstone of jurisdictional due process". *Id.*

---

[5]To the extent they allege facts, those allegations are denied.

Purposeful availment analysis incorporates at least three important inquiries. *IRA Resources, Inc. v. Griego*, 221 S.W. 3d 592, 596 (Tex. 2007) (*citing Michiana*, 168 S.W. 3d at 785). First, the only contacts that are material to the analysis are those of the targeted defendant, and no one else's, *id.*, which insures that no defendant is brought into the forum state "based solely on the unilateral activities of another party or a third person". *Michiana,* 168 S.W. 3d at 785, *quoting Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) Plaintiffs' Complaints seek to predicate jurisdiction based upon the actions, conduct, plans and (alleged) schemes of Mr. Rafizadeh; but that, they may not do. Moreover, bare assertions of fraud and conspiracy, without more, are neither material or relevant in assessing contacts to determine personal jurisdiction over a non-resident defendant. *Capital Finance,* 2008 WL 2186391 at *5. Second, the acts of the defendant on which the plaintiff relies to assert jurisdiction must be purposeful, which insures that jurisdiction is not based solely on contacts that are "random, isolated or fortuitous". *Id.* Third, a defendant "must seek some benefit, advantage or profit by 'availing' itself of the jurisdiction" and, thus impliedly consent[ing] to its laws." *IRA Resources Inc.*, 221 S.W. 3d at 596. Even if this court credits plaintiffs' allegations that One World was somehow the "instrumentality" or "conduit" for the transfer of estate assets in a manner calculated to injure estate creditors, that avails plaintiffs nothing, for "causing an injury in Texas cannot, in and of itself, establish minimum contacts sufficient to establish personal jurisdiction." *Le Meridien Hotels & Resorts v. La Salle Hotel Operating Partnership I, LP*, 141 S.W. 3d 870, 879 (Tex. App. - Dallas 2004, no pet.).

---

[6]Since Texas interprets its long arm statute to reach as far as the federal due process clauses; plaintiffs have not sought to identify any contact by one World with any other State; all of the alleged activities said to give rise both to jurisdiction and to substantive liability are predicated on the actions, decisions, and conduct of the Rafizadehs in Texas; and this court is to conduct the same minimum contacts analysis it would if sitting in diversity (except tallying national, rather than only Texas, contacts), One World has analyzed the jurisdictional issues by applying the Texas courts' interpretations of the due process limitations of *in personam* jurisdiction.

As expressed by the Fifth Circuit, the due process clause permits the exercise of personal jurisdiction over a non-resident defendant when (1) that defendant has purposefully availed itself of the benefits and protections of the forum state by establishing minimum contacts with the forum state; and (2) the exercise of jurisdiction over that defendant does not offend "traditional notions of fair play and substantial justice". *Alpine View*, 205 F. 3d at 214-15. "Minimum contacts" can be established either through contact sufficient to assert specific jurisdiction, or contact sufficient to assert general jurisdiction. *Id.* Specific jurisdiction over a non-resident corporation is appropriate when that corporation has purposefully directed its activities at the forum state and the "litigation results from alleged injuries that 'arise out of or relate to' those activities". *Id. quoting Burger King* 471 U.S. at 472. General jurisdiction, on the other hand, will attach when the non-resident defendant's contacts with the forum state, although not related to the Plaintiffs' cause of action, are "continuous and systematic." *Id.*, *quoting Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 415-16 (1984). (other citations omitted throughout). One World does not anticipate that plaintiffs will asert that general jurisdiction exists, but rather, only specific jurisdiction. Even in that context, however, the Texas Supreme Court has cautioned that "because of the unique and onerous burden placed on a party called upon to defend a suit in a foreign legal system, the minimum contacts analysis is particularly important when the defendant is from a different country". *BMC Software Belgium, N.V. v. Marchand*, 83 S.W. 3d 789, 795 (Tex. 2002), *citing CSR Ltd. v. Link*, 925 S.W. 2d 591, 595 (Tex. 1996).

B. One World Does Not Have Sufficient Minimum Contacts

Plaintiffs have sought to assert three "causes of action" against One World in the Supplemental Complaint: Count 8 for civil conspiracy, Count 13 for single business enterprise, and Count 14, for alter ego. None of these claims or causes of action state a constitutionally sufficient basis for *in personam* jurisdiction over One World.

1. Civil Conspiracy is Not an Independent Basis for Jurisdiction

The Texas Supreme Court has explicitly and specifically determined that a non-resident defendant's alleged participation in a civil conspiracy with a resident of the State of Texas is insufficient to withstand constitutional scrutiny and confer jurisdiction upon that non-resident. In *National Industrial Sand Ass'n v. Gibson*, 897 S.W. 2d 769 (Tex. 1995), the Court recognized that, while some courts have adopted civil conspiracy as a separate basis to support the exercise of jurisdiction on the concept that act of conspirators in furtherance of the conspiracy are attributable to a co-conspirator, *id.* at 773 (citations omitted), Texas would reject this imputed contact analysis, adhering instead to the principle that "it is the contacts of the defendant himself that are determinative. Thus, we decline to recognize the assertion of personal jurisdiction over a non-resident defendant based solely upon the effects or consequences of an alleged conspiracy with a resident of the foreign state. Instead, we restrict our inquiry to whether [the non-resident] itself purposefully established minimum contacts such as would satisfy due process . . . ." *Id.* Plaintiffs' allegations of One World's participation in the grand Rafizadeh civil conspiracy, therefore, provide no basis upon which the court may assert jurisdiction. As at least one Texas court has specifically recognized, "[a]ccordingly, the Texas Supreme Court has foreclosed the use of a conspiracy allegation to support jurisdiction". *Carone v. Retamco Operating, Inc.*, 138 S.W. 3d 1, 10 (Tex. App. - San Antonio 2004, pet. denied).

2. Jurisdiction May Not Be Maintained Under the "Single Business Enterprise" Theory

Whether this court ultimately determines that "single business enterprise" constitutes a viable claim for relief under Texas law, it is clear that the single business enterprise allegations of Count 13 can provide no predicate for the exercise of jurisdiction over One World. At least two Texas courts have recently rejected the allegation of a defendant's participation in a "single business enterprise" as being a valid basis for the assertion of jurisdiction. In *Olympia Capital Assoc., LP v. Jackson*, 247 S.W. 3d 399 (Tex. App. - Dallas 2008, no petition), the plaintiff had sought to impute the forum contacts of the non-resident defendant through the "single business enterprise" theory, alleging essentially the same elements that have been asserted by plaintiffs in this adversary proceeding. *See id.* at 411-412.

In refusing to impute contacts of the Texas defendant to the non-resident under the single business enterprise theory, the court unambiguously wrote:

> However, the Texas Supreme Court has not endorsed "single business enterprise" as a theory under which an entity may be held responsible for the debts of another, *and it clearly has not endorsed "single business enterprise" as a basis for imputing the jurisdictional contacts of one entity to another.* Further, it specifically stated that some of the factors that might be relevant to any "single business enterprise" joint-

> liability theory are irrelevant to a constitutional due process analysis of jurisdictional contact. (citing *PHC-Minden, L.P. v. Kimberly-Clark Corp.*, 235 S.W. 3d 163, 173, 175, *and BMC Software,* 83 S.W. 3d at 799.)
>
> In light of *PHC-Minden, L.P.* and *BMC Software Belgium, we decline to hold that a single business enterprise theory can be a basis for piercing the corporate veil for jurisdictional purposes.* Accordingly, we reject the Receiver's argument that single business enterprise affords a basis for imputing the jurisdictional contacts of either International or Associates to the other.

Id. at 412. (Emphasis added). The court in *Carone* was equally unequivocal:

> Similar to a conspiracy allegation, a joint enterprise claim would distract from the ultimate due process inquiry of whether the non-resident had sufficient minimum contacts with the state. Therefore, we decline to recognize the assertion of personal jurisdiction over a non-resident defendant based solely upon the effects or consequences of an alleged joint enterprise with a resident in Texas. *Our inquiry is restricted to whether the non-resident itself purposefully established minimum contacts as would satisfy due process.*

138 S.W. 3d at 11 (citations omitted) (emphasis added).

Where the Plaintiff's Supplemental and Second Supplemental Complaints in this adversary proceeding fail to allege any such contacts by One World itself with the State of Texas (or, indeed, any other State), as a matter of law, the single business enterprise or joint enterprise co-extensively fails to provide any basis for the assertion of jurisdiction.

3. Jurisdiction May Not Be Maintained Under an Alter Ego Theory

The final "cause of action" pleaded in Plaintiff's complaint is that One World, along with a host of other entities, is merely the alter ego of not only of Mr. and Mrs. Rafizadeh, but apparently, of all of the other entities named as defendants in this proceeding (see Original Complaint, Paragraph 337). Initially, it is conceptually difficult to recognize the basis upon which plaintiffs seek to impose alter ego liability upon One World, for plaintiffs have admitted that the sole officer, director, and shareholder of the Australian entity is an Australian citizen, Mr. Hamid Vaezi (Second Supplemental

Complaint, Paragraph 622). Absent any allegation that either the Rafizadehs or any of their so-called entities own the stock of One World, it is difficult even to conceptualize the applicability of alter ego jurisdictional contacts as recognized by the Texas Supreme Court.

It is true that "Texas may properly exercise personal jurisdiction over a nonresident defendant company that has an alter-ego relationship with a company with a Texas residence, *through evidence showing they are one and the same*, such that the Texas-domiciled company's 'doing business' may be attributed to the nonresident company." *Capital Finance*, 2008 WL 2186391 at *8 (emphasis added)(*citing BMC Software Belgium*). The Court acknowledged in *BMC Software Belgium* that personal jurisdiction may exist over a non-resident defendant "if the relationship between the foreign corporation and its parent corporation that does business in Texas is one that would allow the Court to impute the parent corporation's 'doing business' to the subsidiary", 83 S.W. 3d at 798, *citing Hargrave v. Fiberboard Corp.*, 710 F. 2d 1154, 1159 (5th Cir. 1983) and *Walker v. Newgent*, 583 F. 2d 163, 167 (5th Cir. 1978). The Court explained that the rationale for exercising jurisdiction is "the parent corporation exerts such domination and control over its subsidiary 'that they do not in reality constitute separate and distinct entities, but are one and the same corporation or purposes of jurisdiction'". *Id.* The party seeking to ascribe one corporation's actions to another by disregarding their distinct corporate entities must prove this allegation, because Texas law presumes that two separate corporations are indeed distinct entities. *Id.*

The *BMC Software* Court continued by observing that "to 'fuse' the parent company and its subsidiary for jurisdictional purposes, the plaintiffs must prove the parent control of the internal business operations and affairs of the subsidiary, but that the degree of the control exercised by the parent must be greater than that normally associated with the common ownership and directorship."

Id. at 799. Where neither Schumann Rafizadeh, Madonna Rafizadeh, or any of their so-called "Rafizadeh entities" are even alleged to have any ownership of One World stock, much less control over its operations, the alter ego allegations fail to provide a valid basis for the assertion of jurisdiction as a matter of law. The Due Process Clause permits a non-resident to "purposely avoid a particular forum by structuring its transactions in such a way as to neither profit from the forum's laws nor subject itself to jurisdiction there". *Moki Mac River Expeditions v. Drugg*, 221 S.W. 3d 569, 575 (Tex. 2007), *quoting Burger King* , 471 U.S. at 473, *quoted in Anchia v. Daimler Chrysler AG,* 230 S.W. 3d 493, 499 (Tex. App - Dallas 2007, pet. denied). *See Greenfield Energy, Inc. v. Duprey,* ____ S.W. 3d _____, 2008 WL 961312 (Tex. App. - Houston [14th Dist.] 2008, no pet.), at *8, 10-11. That is precisely what One World has done.

4. Assertion of Jurisdiction Over One World Would Offend Traditional Notions of Fair Play and Substantial Justice

In addition to demonstrating the factual predicate for One World's minimum contacts, plaintiffs mus also demonstrate that the exercise of jurisdiction "does not offend 'traditional notions of fair play and substantial justice' ". *Alpine View*, 205 F.3d at 215; *IFS Financial*, 2007 WL 2692237 at *14. While courts recognize that only rarely would this standard not be satisfied once minimum contacts have been found, One World submits that the facts of this case present precisely such a situation. Particularly where this court has observed that complete relief may already be afforded to plaintiffs if there is any substantive basis for the recovery of any funds delivered to One World, by virtue of Mr. Rafizadeh's presence as a defendant subject to the orders of the court, and the only basis even conceivably existing for jurisdiction also depends upon the alleged actions and conduct of Mr. Rafizadeh, there is nothing to be gained by haling One World into a Texas-domiciled bankruptcy court. There is, rather, only the further increased expense and inconvenience of forcing this Australian entity to defend here. In such a situation, the court may decline to exercise jurisdiction based upon traditional notions of fair play and substantial justice, *see Greenfield Energy,* 2008 WL 961312 at *13 n.11 (collecting cases), and should do so here.

IV. CONCLUSION

In the final analysis, plaintiffs' efforts to assert jurisdiction over One World in this adversary proceeding are very similar to the comparable unsuccessful effort analyzed by the court in *Capital Finance*. There, the plaintiff had alleged that the domestic and overseas entities had conspired to assist alleged debtors "in their attempts to fraudulently transfer, convert, and remove assets remaining" from certain creditors' reach. 2008 WL 2186391 at *4. Adhering to the Texas Supreme Court's directions to evaluate only the contacts of the defendant with the forum state, and rejecting the claims of conspiracy, fraud, and single business enterprise, the court concluded that the plaintiff had failed to satisfy its burden of imputing contacts to the non-resident defendant under the alter ego theory. *Id.* at *5-10.

There is even less of a showing proffered by the plaintiffs in this adversary proceeding to warrant the imputation of those contacts to One World. The threadbare, conclusory allegations of control will not suffice, particularly where the defendant is incorporated and conducts business solely in the Commonwealth of Australia. Plaintiffs are unable to allege, will continue to be unable to allege, and will be unable to prove either any direct contact by One World with the United States, or the existence of an alter ego relationship with one or more of the so-called "Rafizadeh entities".

Pursuant to Rule 12(b)(2), the claims asserted against One World Future Pty, Ltd. should be dismissed.

Respectfully submitted,

MATT E. RUBIN
State Bar No. 17361620
2000 Bering Drive, Suite 909
Houston, Texas 77057
Telephone: (281) 833-6100
Telecopier: (713) 981-8670

ATTORNEY FOR DEFENDANT,
ONE WORLD FUTURE PTY., LTD.

CERTIFICATE OF SERVICE

I do hereby certify that on the 23rd day of June, 2008, a true and correct copy of the foregoing instrument has been forwarded to all counsel of record via electronic filing notice.

Matt E. Rubin